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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Application of Open Network)

Architecture and Nondiscrimination)

Safeguards to GTE Corporation)

CC Docket No. 92-256

RECEIVED

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COMMENTS OF BELL ATLANTIC¹

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Different treatment of the operating telephone company affiliates of GTE Corporation ("GTE") and the regional Bell operating companies ("RBOCs") has consequences that transcend the Commission's regulations. Both Congress, in proposed legislation, and the U.S. District Court, in evaluating possible changes to the AT&T divestiture decree, have followed the Commission's lead in assuming that the RBOCs somehow deserve stricter treatment. Two U.S. Courts of Appeals, however, have been unpersuaded by the Commission's previous attempts to distinguish the service areas of GTE and the RBOCs. It is therefore appropriate for the Commission to eliminate any regulatory distinction. If the Commission decides to impose different requirements based upon the density of the population various telephone companies serve, it should apply the same rules to the urban and rural operations of both GTE and the RBOCs.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company and New Jersey Bell Telephone Company.

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In this proceeding, the Commission tentatively concludes that GTE, following its merger with Contel Corporation, should be subjected to modified Open Network Architecture ("ONA") obligations.² The Commission finds, however, that GTE is now larger than most or all of the RBOCs.³ Even though it recognizes that GTE's service area is still largely rural and dispersed, it proposes to apply ONA obligations on GTE.⁴

The Commission asks, however, whether different parts of GTE's territory should receive different regulatory treatment.⁵ Bell Atlantic urges the Commission to modify the ONA requirements in rural areas, because enhanced service providers have few operations in those areas and, therefore, there is little demand for ONA services. With minimal competition, the cost of implementing nonstructural safeguards may outweigh the competitive benefits. However, the reduced regulation should apply equally to rural areas served by the RBOCs and by GTE.⁶

The Commission's disparate treatment of the RBOCs and GTE appears to have encouraged proposals in the last Congress to curtail the ability of the RBOCs, but not GTE, to provide new

² *Notice of Proposed Rulemaking*, 7 FCC Rcd 8664 at ¶¶ 10-13 (1992) ("Notice").

³ *Id.* at ¶ 8 and n. 27, citing FCC Common Carrier Statistics, Table 1.1 (1990/91 ed.) and USTA Holding Company Report (1991).

⁴ *Id.* at ¶ 13.

⁵ *Id.* at ¶ 12.

⁶ For example, Bell Atlantic serves large rural areas in West Virginia, Virginia, Pennsylvania and Maryland.

information services.⁷ Similarly, the consent decree court, which supervises both the GTE and RBOC consent decrees, has routinely denied the RBOCs even a modicum of interexchange relief, such as carrying signalling information across LATA boundaries to serve rural areas more efficiently.⁸ GTE, on the other hand, has received waivers to carry such information, despite its comparable size.⁹ The Commission should not encourage this unjustified discrimination by continuing to treat comparable companies differently.

Appellate Courts have rejected previous attempts to distinguish GTE from the RBOCs. As the D.C. Circuit pointed out, "not all of GTE's service areas are small relative to the BOCs'. In particular, GTE controls the entire state of Hawaii as well as large urban areas in Tampa and Los Angeles."¹⁰ The Seventh Circuit had earlier found the Commission's distinction between GTE and the former Bell companies "not fully persuasive."¹¹

⁷ See, e.g., H.R. 5096 and S. 2112.

⁸ *U.S. v. Western Elec. Co.*, No. 82-0192 at 2 (D.D.C. Sept. 6, 1990).

⁹ *United States v. GTE Corp.*, No. 83-1298 (D.D.C. March 26, 1992).

¹⁰ *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 112 n. 6 (D.C. Cir. 1989).

¹¹ *Illinois Bell Tel. Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984).

Accordingly, any distinctions the Commission makes in ONA requirements should apply equally to the rural areas of both the RBOCs and GTE.

Respectfully submitted,

**The Bell Atlantic Telephone
Companies**

By Their Attorneys

A handwritten signature in dark ink, appearing to read "Lawrence W. Katz", is written over a horizontal line.

Michael D. Lowe
Lawrence W. Katz

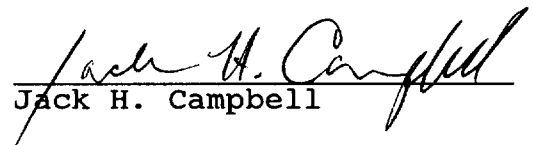
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February 22, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments of Bell Atlantic" was served this 22nd day of February, 1993 by hand or first class mail, postage prepaid, to the parties on the attached list.



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